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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,274	12/18/2001	Brian Bartlett	WALS-102	2341

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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,274

Applicant(s)

BARTLETT ET AL.

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) 31-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Claims 1-82 are currently pending.

Election/Restrictions

2. Applicant's election with traverse of Group I, claims 1-30 in Paper No. 8, dated April 25, 2003, is acknowledged. The traversal is on the ground(s) that all of the groups have the same special technical feature because all of the groups include fish meal as a source of omega-3-fatty acids. This is not found persuasive because PCT rule 13.2 defines the "special technical feature" as "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." The use of fish meal as a source of omega-3-fatty acids is anticipated by the art for the reasons stated below. Thus, since the unifying feature of the different groups of invention is known in the art, it cannot be a special technical feature because it does not make a new contribution to the art. Therefore, the special technical feature of each of the invention would have to lie in the additional ingredients that are present in the fish meal composition. Based on this, the invention is properly restricted based on lack of unity.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 31-82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 8.

4. Claims 1-30 are examined on the merits.

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Claim Objections

5. Claims 3, 5, and 15 are objected to because of the following informalities:
“docosaheaxaenoic” is misspelled as “decosaheaxaenoic”. Appropriate correction is required.
6. Claims 7, 9, 10, 11, 18, 19, and 20 are objected to because they do not end in a period.
7. Claim 7 is objected to because “based” is misspelled in line 10.
8. Claims 9 and 18 are objected to because “ton” is misspelled in line 2 and because they contains a period that is not at the end of the claim. This period is found after “crude canola oil carrier”.
9. Claim 11 is objected to because “ton” is misspelled in line 2.
10. Claim 23 is objected to because it contains the word “the” twice in succession in line 3.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2, 6-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 1, 6, 7, 17, 19, and 22 are indefinite because the claims do not define how long a fatty acid must be in order to be considered a “long chain” fatty acid.
12. Claims 8, 9, 17-20, and 23-25 are indefinite because it is not clear what characteristics the canola and palm oil must possess in order to be considered “crude.” In addition, it is not clear what the “81%” after phosphoric acid indicates.

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13. Claims 8, 9, 17, 18, 20, 21, 24, and 25 are indefinite because it is not clear what the "China star" after aniseed indicates.
14. Claims 10, 11, 17-20, 23, and 26 are indefinite because it is not clear what the "50" after Vitamin E indicates.
15. Claims 20 and 27 rendered indefinite by the use of parentheses. The use of parentheses is considered indefinite because it cannot be determined when the enclosed limitation is or is not to be included in the claim.
16. Claim 27 is also indefinite because it is not clear what "aqueous extraction" refers to.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Keefe et al. (Food Research International (1995), vol. 28, no. 4, pp. 417-424).

O'Keefe teaches a diet for poultry that contains up to 12% fish meal. The fish meal contains EPA, DHA, and DPA (see Table 1).

18. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Howe (World Review of Nutrition and Dietetics (1998), vol. 83, pp. 132-143).

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Howe teaches a diet for pigs that contains up to 20% fish meal. The fish meal contains EPA, DHA, and DPA (see last paragraph of page 137). Howe also teaches that fish and poultry can be fed omega-3-fatty acids (see page 134, second paragraph).

19. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandell et al. (World Review of Nutrition and Dietetics (1998), vol. 83, pp.144-159).

Mandell teaches a diet for cattle that contains up to 10% fish meal. The fish meal contains EPA, DHA, and DPA (see Table 3).

20. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by German Pat. No. 43 27 310 A1.

DE '310 teaches a diet for cows that contains up to 10% fish meal. The diet provides EPA, DHA, and DPA (see English abstract).

21. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,133,963.

US '963 teaches a diet for poultry that contains 8% fish meal (see column 7, line 29). The diet introduces omega-3-fatty acids to eggs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 6-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Keefe or Howe or Mandell in view of Japanese Pat. No. 06209720 A, Roubal (Journal of the American Oil Chemists' Society (1963), vol. 40, pp. 215-218), US Pat. No. 5,130,242, US Pat. No. 5,972,391, and US Pat. No. 5,112,624.

As discussed above, O'Keefe, Howe, and Mandell teach a diet of fish meal that includes omega-3-fatty acids. The diet improves the quality of the animal products. However, the references do not teach adding green tea extract to the diet. JP '720 teaches that feeding green tea extracts to poultry, pigs, and cattle improves the quality of the meat. Therefore, a person of ordinary skill in the art would have a reasonable expectation that feeding a combination of fish meal and green tea to produce animals would improve the quality of the products obtained from these animals. Thus, an artisan of ordinary skill would have been motivated to combine fish meal and green tea into one composition.

The references also do not teach using tuna as the source of the fish meal. Roubal teaches that tuna contains EPA, DHA, and DPA. Therefore, a person of ordinary skill in the art would be motivated to use tuna as the source of the fish meal in the diets taught by the references.

The references also do not specifically teach adding phosphoric acid, ethoxyquin, Vitamin E, Vitamin C, citric acid, propyl gallate, and wheat meal to the fish meal. However, the references do teach that antioxidants should be added to the fish meal to prevent oxidation. US '242 teaches using antioxidants such as phosphoric acid, citric acid, Vitamin E, and Vitamin C to protect omega-3-fatty acids against oxidation. The reference also teaches mixing the omega-3-fatty acids containing materials with grain products to help prevent oxidation (see column 11 and

12). Therefore, a person of ordinary skill in the art would be motivated to add antioxidants and grain products to fish meal based on the benefits taught by the references.

The references do not specifically teach using ethoxyquin, benzoic acid and propyl gallate as the antioxidants. However, both of these substances are known antioxidants and would be obvious to substitute for the antioxidants taught by the references. In addition, the references do not specifically teach using wheat as the grain product. However, wheat is known to be an acceptable grain for animal feed. Therefore, it would be an obvious modification to use wheat.

The references also do not specifically teach using palm and canola oil in the composition. However, it is well known that animal diets require a fat source. Therefore, it would be obvious to add these oils as a fat source.

In addition, the references do not teach adding aniseed, thyme, rosemary, and peppermint to the composition. US '391 teaches using aniseed, thyme, and rosemary to improve the flavor of animal feed (see column 2, lines 25, 29, and 31). US '624 teaches using peppermint to improve the flavor of animal feed (see column 2, line 40). Therefore, a person of ordinary skill in the art would be motivated to add aniseed, thyme, rosemary, and peppermint to the fish meal composition based on the beneficial improvement in flavor that these additives would bring.

The combination of the references teaches adding all the ingredient together but not necessarily in the same manner claimed by applicant. However, the order in which ingredients are added to a composition and the temperatures at which the composition is heated to are result effective variables that a person of ordinary skill in the art would routinely optimize. Unless applicant's process of making the supplement offers some difference from the combination

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taught by the prior art, the claimed method of making the composition is considered to be obvious.

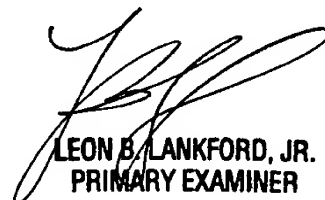
23. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
June 13, 2003


LEON B. LANKFORD, JR.
PRIMARY EXAMINER